



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 1, 1939

Hon. Chas. A. Martin
County Auditor
Harrison County
Marshall, Texas

Dear Sir:

Opinion No. O-704

Re: When examining trial accounts are presented to the county for payment by precinct officials compensated on a fee basis, from what fund should they be paid?

Your request for an opinion on the above stated question has been received by this office.

Section 6(a), Article 3912e, Revised Civil Statutes, reads as follows:

"In counties wherein the county officials are on a salary basis, in addition to the monies deposited in said Officers' Salary Fund or funds under the provisions of Sections 1, 3 and 5 of this Act there shall be deposited therein quarterly on the first day of January, April, July and October of each year, such sums as may be apportioned to such county under the provisions of this Act, out of the available appropriations made by the Legislature for such purposes provided, however, that in counties wherein the Commissioners' Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public accounts shall have been notified of the order of the Commissioners' Court that the

county officers of such county shall be compensated on a salary basis for the fiscal year, and in that case the first quarterly payment of such apportionment shall be made in fifteen (15) days after receipt of such notice by the comptroller, and the remaining payments on the dates hereinabove prescribed. It shall be the duty of the comptroller of Public Accounts to annually apportion to all counties in which the county officers are to be compensated on the basis of a salary any monies appropriated for said year for such apportionment; each county entitled to participate in such apportionment shall receive for the benefit of its Officers' Salary fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each county according to the last preceding Federal Census; provided that the annual apportionment for such purposes shall not exceed fourteen (14¢) cents per capita of said population of each county where county officers are compensated on a salary basis under the provisions of this Act. Provided that in all counties which had a population of less than sixty thousand (60,000) inhabitants in 1930 according to the last preceding Federal Census and which now have ad valorem valuations for all purposes according to the last approved tax roll of such county, which have increased at least fifty (50) per cent over the valuation for 1930, the amount to be paid to each of said counties for its salary fund shall be the sum not to exceed twenty-five (25¢) cents per capita based on the 1930 population. The quarterly payment of such apportionment of such appropriation shall be made on warrants drawn by the State Comptroller upon the State treasury payable to the county treasurer of the county in whose favor

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the apportionment is made and said warrants shall be registered by the Comptroller and the Treasurer and shall be mailed by the Comptroller to the treasurer of the county."

Section 6(b), Article 3912e, reads as follows:

"No officer receiving a salary shall hereafter receive any ex officio compensation; provided, however, the Commissioners' Court shall transfer from the General Fund of the county to the Officers' Salary Fund or funds of such county such funds as may be necessary to pay the salaries and other claims chargeable against the same when the monies deposited therein are insufficient to meet the claims payable therefrom."

Section 6(c), Article 3912e, reads as follows:

"Any monies remaining in the Officers' Salary Fund or funds of any county at the end of any fiscal year after all salaries and authorized expenses incurred against said fund for said year shall have been paid may be, by order of the Commissioners' Court, transferred to the credit of the General Fund of the county."

Section 6(a), Article 3912e, supra, and Section 13b, Article 3912e, Revised Civil Statutes provides for the payment by the state in counties where the county officials are on a salary basis its proportionate part of the appropriation, to be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each county according to the last preceding Federal Census. We are informed by the Comptroller's office and by your letter that in Harrison County the county officials are compensated on the salary basis, and the precinct officials are compensated on the fee basis.

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Section 17(a), Article 3912e, Revised Civil Statutes, reads as follows:

"The term 'Precinct Officers' as used in this Act means justices of the peace and constables.

"In all counties in this State such precinct officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise in accordance with the provisions of Section 2 of this Act.

"In counties where the Commissioners' Court shall have determined that precinct officers shall be compensated on an annual salary basis, but wherein they have determined that county officers shall not be so compensated, the Officers' Salary Fund of said county shall be composed and made up of fees, commissions and other compensation collected by the precinct officers of such county and deposited in said fund, and such funds as may be transferred to said fund by the Commissioners' court of the county.

Section 17(b), Article 3912e, reads as follows:

"In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing

August 24, 1935.

"In counties in which precinct officers are paid a salary as compensation for their services, such officers desiring to appoint one or more deputies or assistants shall make application to the Commissioners' Court for authority to appoint such deputy or deputies, in the manner and form prescribed for applications for deputy county officers by Article 3902, Revised Civil Statutes 1925, as amended within the provisions of this Act; the Commissioners' Court shall not authorize the appointment of any deputy constable at a salary exceeding Fifteen Hundred (\$1500.00) Dollars per year. The salaries of deputies authorized to be appointed under the provisions of this Section shall be paid out of the Officers' Salary Fund.

"In counties where the county officers named in this Act are compensated on the basis of an annual salary, the State of Texas shall not be charged with and shall not pay any fee or commission to any precinct officer for any services by him performed, but said officer shall be paid by the County out of the Officers' Salary Fund such fees and commissions as would otherwise be paid him by the State for such services."

Section 17(h), supra, specifically provides that precinct officers in counties wherein the county officers named in this act are compensated on the basis of an annual salary, the state of Texas shall not be charged with and shall not pay any fee or commission to any precinct officer for any services by him performed, but such officer shall be paid by the county out of the Officers' Salary Fund, such fees and commissions as would otherwise be paid him by the State for such services.

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You are respectfully advised that it is the opinion of this Department that the examining trial fees or accounts of predinct officers who are compensated on a fee basis in counties where the county officials are compensated on an annual salary basis such examining trial fees or accounts should be paid by the county out of the Officers' Salary Fund.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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APPROVED:

ATTORNEY GENERAL OF TEXAS